

A

**Public Prosecutor v
Dato' Seri Anwar bin Ibrahim (No 4)**

HIGH COURT (KUALA LUMPUR) — CRIMINAL APPLICATION
NO 44-115 OF 1998

AUGUSTINE PAUL J

B

27 MAY 1999

Criminal Procedure — Contempt of court — Contemptuous application — Whether inherent jurisdiction of court to dismiss contemptuous application summarily

C

Criminal Procedure — Prosecution — Right to conduct prosecution — Designation of deputy public prosecutor to conduct prosecution — Whether exercise of Attorney General's discretion — Application to review designation of deputy public prosecutor, to whom made — Whether court has jurisdiction to discharge prosecutor from further prosecuting case

D

The accused — Dato' Seri Anwar bin Ibrahim — had on 28 November 1998 filed a notice of motion through the law firm of Messrs Zainur Zakaria & Co praying for an order that the senior deputy prosecutors Dato' Abdul Gani Patail ('AGP') and En Azahar bin Mohamed ('Azahar'), two members of the prosecution team, be prevented, prohibited or discharged from further prosecuting the case and that the matter of their conduct be referred to the Attorney General for appropriate action. The motion was supported by an affidavit affirmed by the accused and based on a statutory declaration affirmed by an advocate and solicitor Manjeet Singh Dhillon ('MSD') and a letter that he had written to the Attorney General. In substance, the motion was anchored on the premise that AGP had asked MSD to fabricate evidence against the accused.

E

F

Held, finding the motion contemptuous and striking it out summarily:

G

Since the motion was contemptuous, the question of making any order in respect of the prayers sought did not arise. The motion stood to be dismissed in limine without even the need for an affidavit-in-reply from the Attorney General's Chambers. Where there is an abuse of the process of the court, that is to say where a proceeding is frivolous, vexatious or oppressive, the court may strike out the pleading or stay the proceeding under its inherent jurisdiction (see p 547F-G).

H

[Bahasa Malaysia summary]

I

Tertuduh — Dato' Seri Anwar bin Ibrahim — telah pada 28 November 1998 memfailkan satu notis usul melalui firma guaman Tetuan Zainur Zakaria & Co, memohon agar satu perintah bahawa timbalan kanan pendakwa raya Dato Abdul Gani Patail ('AGP') dan En Azahar bin Mohamed ('Azahar'), dua ahli kumpulan pendakwaan, dihalang, dilarang dan dilepaskan daripada mendakwa selanjutnya kes

tersebut dan bahawa perkara mengenai kelakuan mereka dirujuk kepada Peguam Negara untuk tindakan yang sewajarnya. Usul tersebut disokong oleh affidavit yang diikrar oleh tertuduh dan berdasarkan kepadaakuan berkanun yang diikrar oleh seorang peguambela dan peguamcara, Manjeet Singh Dillon ('MSD'), dan sepucuk surat yang ditulis oleh beliau kepada Peguam Negara. Dari segi bahan sokongan, usul ini adalah bertapak pada premis bahawa AGP telah meminta MSD untuk memalsukan keterangan terhadap tertuduh.

Diputuskan, mendapati bahawa usul tersebut adalah suatu penghinaan dan mengketepikannya secara ringkas:

Oleh kerana usul tersebut adalah suatu penghinaan, persoalan untuk membuat perintah seperti yang dipohon tidak timbul. Usul diketepikan tanpa perlu untuk satu affidavit jawapan daripada Jabatan Peguam Negara. Di mana terdapat penyalahgunaan proses mahkamah, iaitu di mana proses adalah remeh, menyusahkan atau menindas, mahkamah boleh mengketepikan pliding atau menangguhkan prosiding di bawah bidang kuasa sedia adanya (lihat ms 547F-G).]

Notes

For cases on contempt of court generally, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1011-1035.

For a case on right to conduct prosecution, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) para 2040.

Cases referred to

PP v Datuk Harun bin Haji Idris & Ors [1976] 2 MLJ 116 (refd)

Legislation referred to

Federal Constitution art 145(3)

Raja Aziz Addruse (*Haji Sulaiman Abdullah, Zainur Zakaria, Christopher Fernando, Gurbachan Singh Pannu, Sankara N Nair, Pawan Cheek Marican, Ainiah Kamaruzaman, Zulkifli Nordin and Robyn Choi* with him) (*Raja Aziz Addruse*) for the applicant.

Mohtar Abdullah (*Abdul Gani Patail, Azahar bin Mohamed, Mohd Yusof Zainal Abidin, Stanley C Augustine, Nordin Hassan and Shamsul Sulaiman* with him) (Attorney General's Chambers) for the prosecution.

Augustine Paul J: On 28 November 1998, Dato' Seri Anwar bin Ibrahim ('the accused') filed a notice of motion ('the motion') through the law firm of Messrs Zainur Zakaria & Co praying for an order that:

- A** (a) senior deputy public prosecutors, Dato' Abdul Gani Patail and En Azahar bin Mohamed, be prevented or prohibited or discharged from further prosecuting in this case; and
- (b) The matter of the conduct of the two said senior deputy public prosecutors be referred to the Attorney General with a view to such action as may be appropriate to be taken against them.
- B**

The motion was supported by an affidavit ('the affidavit') affirmed by the accused. The affidavit was based on a statutory declaration ('the statutory declaration') affirmed by one Manjeet Singh Dhillon, an advocate and solicitor, and a letter ('the letter') that he had written to the Honourable Attorney General. In substance, the motion was anchored on the premise that Dato' Abdul Gani Patail had asked Manjeet Singh Dhillon to fabricate evidence against the accused. As the motion was contemptuous, I had found Zainur Zakaria guilty of contempt of court for having filed it. On 2 December 1998, I struck out the motion summarily. This appeal is by the accused against that order.

- D**
- In my grounds of judgment in the appeal by Zainur Zakaria against his conviction and sentence for contempt of court, I had set out in detail the reasons why I had found the motion to be scandalous, frivolous, vexatious and an abuse of the process of the court meant to undermine the integrity of the trial. In coming to that finding, I had accepted the contents of the statutory declaration and the letter as the truth as to what transpired at the meeting between Dato' Abdul Gani Patail and Manjeet Singh Dhillon which prompted the motion. I had found that there was no basis for the accused to say that Dato' Abdul Gani Patail had asked for evidence to be fabricated against him. As a matter of fact, I had referred the documents annexed to the motion to Zainur Zakaria in detail to ascertain whether there was any basis for him to have filed it. He was not able to satisfy me. As I had found the motion to be contemptuous, the question of making any order in respect of the prayers sought simply does not arise. It stands to be dismissed in limine without even for the need of an affidavit-in-reply from the Attorney General's Chambers. Where there is an abuse of the process of the court, that is to say a proceeding which is frivolous, vexatious or oppressive, the court may strike out the pleading or stay the proceeding under its inherent jurisdiction (see Oswald's *Contempt of Court* (3rd Ed) p 82).

- G**
- Be that as it may, and, in any event, the prayers sought by the accused cannot also be sustained in law. With regard to the first prayer, it is my view that the court does not have the power to discharge a prosecutor from further prosecuting in a case. Pursuant to art 145(3) of the Federal Constitution, the conduct of a prosecution is in the hands of the Attorney General (see *PP v Datuk Harun bin Haji Idris & Ors* [1976] 2 MLJ 116). It is he, and he alone, who has been empowered to conduct a prosecution at his discretion. It follows that the designation of a Deputy Public Prosecutor to conduct the prosecution of a case is an exercise of the discretion conferred on the Attorney General and an application to review such a
- H**
- I**

decision must be made to him and not to the court. With regard to the second prayer, a court order is not necessary to refer the conduct of a deputy public prosecutor to the Attorney General. The accused may do it himself.

In the premises, I struck out the motion summarily.

Motion struck out summarily.

Reported by Andrew Christopher Simon

A

B

C

D

E

F

G

H

I